

General Information Letter: Nonresident individual is not subject to tax on retirement pay, Social Security or interest or dividends on personal savings.

February 13, 2003

Dear:

This is in response to your letter dated January 4, 2003. The nature of your request and the information you have provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.ILtax.com.

In your letter you have stated the following:

I am writing to you in hopes that I can get a situation resolved between my daughter and myself. This is my situation: (a) I am retired – age 87 (b) I am a resident of Florida (c) my income comes from three sources. (Interest) 1. From C.D.'s and Bank Accts. 2. Pension 3. Social Security. During the summer months (approx 4 months), I live in Illinois. My daughter tells me that I have to complete "Form IL-1040" and Schedule N.R. (non-resident). When I studied the NRIL – 1040 instructions, it states (on Page 2 – 8 Interest Income): 1 "Interest income that you received, other than business interest income, is not taxed by Illinois." (The interest income I receive is not business income. Therefore, no tax due). 2 – On page 3 of the Instructions, next to Line 16 – "Taxable Pensions and Annuities" it states: "As a nonresident, your pensions and annuities are not taxed by Illinois." 3 – Also, on Page 3 of the instructions, next to Line 20 – "Taxable social security benefits" it states: "As a nonresident, your social security benefits are not taxed by Illinois." Therefore, since none of my income is taxed by Illinois, why would it be necessary for me to complete IL-1040 and Schedule N.R. Forms?

RULING

Section 502(a) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/101 *et seq.*) sets forth the requirements for filing Illinois income tax returns. That section states in pertinent part as follows:

- (a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:
 - (1) For which such person is liable for a tax imposed by this Act, or
 - (2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

Under this section, a nonresident of Illinois is not required to file an Illinois income tax return unless the nonresident is liable for Illinois income tax. A nonresident is not liable for Illinois income tax where the nonresident does not have "Illinois net income" as defined in IITA Section 202. Under IITA Section 202, Illinois net income is defined as that portion of the taxpayer's base income (as defined in IITA Section 203) which is allocable to Illinois under the provisions of Article 3 of the IITA, less certain deductions.

The computation of base income in the case of individuals starts with federal adjusted gross income (AGI). Base income is derived by adjusting the taxpayer's AGI to take into account numerous statutory addition and subtraction modifications. (IITA § 203(a))

Title 4, Section 114 of the United States Code (4 U.S.C. 114) prohibits a state from imposing an income tax on the retirement income of a nonresident. The term "retirement income" is defined at subsection (b) of Section 114.

In addition, IITA Section 203(a)(2)(F) provides a subtraction modification for amounts included in AGI pursuant to Internal Revenue Code Sections 402(a), 402(c), 403(a), 403(b), 406(a), 407(a) and 408, as well as amounts received under the provisions of a retirement plan for government employees.

As a result of these provisions, most pension income is not included in Illinois base income.

IITA Section 203(a)(2)(L) provides a subtraction modification for social security benefits. Accordingly, social security benefits are not included in Illinois base income.

IITA Section 301(c)(2)(A) provides that in the case of a nonresident, interest income that is nonbusiness income shall not be allocated to Illinois.

Applying the foregoing to your case, if you are a nonresident of Illinois, and your income consists solely of pension income, social security benefits, and nonbusiness interest income, then you do not have any Illinois net income. Accordingly, you are not required to file Form IL-1040 or Schedule NR.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have further questions regarding this GIL, please call (217) 782-7055. If you have additional questions regarding Illinois income tax laws, please visit the Department's web site at www.ILtax.com.

Sincerely,

Brian L. Stocker
(Associate Counsel – Income tax)